

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID ROSENBERG, THE ROSENBERG
FAMILY NOMINEE TRUST, and
THE ROSENBERG FAMILY NOMINEE
TRUST/SAWDRAH,

Plaintiffs,

v.

DAVID GENTILE,

Defendant.

Civil Action No. 1:24-cv-10167

PLAINTIFFS' MOTION FOR IMPOUNDMENT

Pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Standing Order 21-1, as amended, Plaintiffs David Rosenberg, the Rosenberg Family Nominee Trust, and the Rosenberg Family Nominee Trust/Sawdrah (collectively, "Plaintiffs") respectfully move this Court to permit a highly sensitive document (HSD) quoted in the body of the Complaint and attached as an exhibit thereto be filed under seal. As grounds for this motion, Plaintiffs states as follows:

1. This case concerns Defendant David Gentile ("Mr. Gentile" or "Defendant") and his manipulation of accounting and financial statements at GPB Prime Holdings, LLC ("GPB Prime") and Automile Parent Holdings, LLC ("Automile Parent") to deprive Plaintiffs of their lawful 7.422% distributive share of Automile Parent's net cash flow in contravention of the Amended and Restated Operating Agreement ("Operating Agreement").

2. In order to present their arguments as strongly as possible, Plaintiffs must reveal certain aspects of a Settlement and Release Agreement dated November 11, 2021 ("Settlement Agreement"), which is quoted in paragraph 37 of the Complaint and attached thereto at **Exhibit 3**.

3. The Settlement Agreement is subject to a confidentiality clause, which, in relevant part, states that “[t]he Parties and their respective counsel, agents, officers, employees, and owners, shall not disclose the terms of this Agreement to any person, entity, or third party, provided, however, that notwithstanding the foregoing, the terms of this Agreement may be disclosed . . . in an action brought to enforce the terms of this Agreement,” among other circumstances. *See Exhibit 3*, § 7(a).

4. The present cause of action is brought, in part, to enforce the terms of the Settlement Agreement. To the best of Plaintiffs’ knowledge, the only persons interested in the information which they seek to have impounded are Plaintiffs and Mr. Gentile. Accordingly, Plaintiffs request that the Settlement Agreement and Paragraph 37 of the Complaint be treated as an HSD.

5. It should be noted that this is a stockholders’ suit between private parties. Thus, the public interest in the information which Plaintiffs seek to have impounded is not implicated. By contrast, granting of this motion is consistent with Standing Order 21-1, which, in relevant part, states that an HSD includes, among other things, “any other document that a party believes contains information that is so sensitive that disclosure would cause a high risk of imminent and extreme harm to an identifiable person or entity.” Plaintiffs submit that disclosure of the Settlement Agreement would cause a high risk of imminent and extreme harm to the contracting parties.

6. Impoundment is warranted by the necessity of a party to present its case fully. Plaintiffs’ counsel believes that it is necessary to disclose certain aspects of the Settlement Agreement in the pleadings and at oral argument during the course of this litigation.

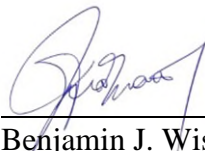
7. Impoundment will have the effect of preserving Plaintiffs' legitimate expectation of privacy in filing pleadings while also affording Mr. Gentile's ability to present his defense.

WHEREFORE, Plaintiffs respectfully request that the Court issue an Order that the Settlement Agreement as well as Paragraph 37 of the Complaint be treated as an HSD, and, in turn, be filed under seal and redacted, respectively, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Standing Order 21-1.

Respectfully submitted,

DAVID ROSENBERG, THE ROSENBERG
FAMILY NOMINEE TRUST, and
THE ROSENBERG FAMILY NOMINEE
TRUST/SAWDRAN,

By their Attorneys,

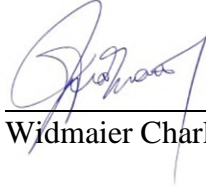


Benjamin J. Wish (BBO No. 672743)
Widmaier M. Charles (BBO No. 705208)
Todd & Weld LLP
One Federal Street, 27th Floor
Boston, MA 02110
Telephone: 617-720-2626
bwish@toddweld.com
wcharles@toddweld.com

Dated: January 24, 2024

CERTIFICATE OF SERVICE

I, Widmaier M. Charles, hereby certify that this document has been filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on the above date.

A handwritten signature in blue ink, appearing to read "Widmaier Charles", is positioned above a horizontal line.

Widmaier Charles